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IN THE SUPREME COURT OF THE UNITED STATES

DEC 20 1982

ALEXANDER L. STEVAS,

CLERK

NO. _____

LARRY WAYNE BOX,
Petitioner

vs.

STATE OF ALABAMA,
Respondent.

IN OPPOSITION TO THE PETITION
FOR WRIT OF CERTIORARI

CHARLES A GRADDICK
ATTORNEY GENERAL

AND

J. ANTHONY McLAIN
SPECIAL ASSISTANT ATTORNEY GENERAL

JAMES F. HAMPTON
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QUESTION PRESENTED

WHETHER THE WARRANTLESS SEARCH AND
SEIZURE OF THE PETITIONER AND HIS AUTOMOBILE
WAS JUSTIFIED?

TABLE OF AUTHORITIES

<u>Coolidge v. New Hampshire,</u> 403 U.S. 443 (1977).	6
<u>Kinard v. State,</u> 335 So. 2d 924 (Ala. 1976).	6
<u>Shipman v. State,</u> 291 Ala. 484, 282 So. 2d 700 (1973).	7

STATEMENT OF THE CASE

Sergeant Jim Brooks of the Narcotics Division of the Jefferson County, Alabama, Sheriff's Department received information from a confidential informant that narcotics activity involving the Petitioner and another was occurring at a residence located in Jefferson County. Sergeant Brooks and fellow law enforcement personnel conducted surveillance of the residence in question.

The Petitioner and one Danny Bice arrived at the residence in a 1974 blue Ford Torino driven by the Petitioner. Bice took a small brown sack into the house and he then helped the Petitioner load three large, green garbage bags filled with an unknown substance into the truck of the car. The Petitioner drove away in the car, with Bice apparently staying at the house. A chase car was notified and attempted to apprehend the Petitioner, but lost his vehicle in heavy traffic.

Bice was subsequently observed through a window in the house "cutting" cocaine with a "poker" card and a razor blade. The Petitioner returned and he and Bice loaded more sacks into the car and left the house.

Surveillance was continued under the understanding that another officer was in the process of obtaining or had obtained a search warrant for the house. Sergeant Brook subsequently observed the '74 blue Ford Torino arriving back at the house. The Petitioner got out of the car and walked into a wooded area near the house and began searching in the weeds. He then returned to the car and backed it nearer to the house. He got out of the car again and returned to the same area he searched earlier. He picked up some small plastic bags partially filled with a white substance. He returned to the car and placed the plastic bags in a brown paper sack. He then drove away

from the house but was blocked by a police car. Police surrounded the Petitioner's vehicle.

Sergeant Brooks identified himself to the Petitioner. The Petitioner and his female companion got out of the car. Sergeant Brooks looked into the car after the Petitioner got out and observed an open purse lying on the front seat with a brown paper sack in the top of the purse. The brown paper sack was confiscated. The plastic bags found therein contained cocaine.

ARGUMENT

REASONS FOR DENYING THE WRIT

The Petitioner urges that the law enforcement officer (Sergeant Brooks) "had no reasonable grounds to believe that Box (the Petitioner) was at the time of his arrest committing a crime or was otherwise engaged in any activity which could have given rise to probable cause to effect an arrest or search": (Petitioner's Petition for a Writ of Certiorari, pp.7-8). The factual shortcoming of this argument was fully addressed by the Alabama Court of Criminal Appeals. (See Appendix A of the Petition).

Law enforcement personnel had observed the Petitioner and Bice load plastic garbage bags full of unknown material into the car driven by the Petitioner. Bice was seen taking a brown paper sack from the car into the residence under surveillance. He was then observed inside the house "cutting" cocaine. The Petitioner was then observed

taking the plastic bags of cocaine from the yard near the house and placing them in a brown paper sack. The brown paper sack was then observed by Sergeant Brooks in the front seat of the car as the Petitioner and his companion exited the vehicle. The Petitioner and the automobile were taken into police custody as was the brown paper sack and its contents.

The Respondent submits that the facts known to authorities at the time of the seizure were more than sufficient to establish reasonable grounds to believe the Petitioner was, at the time of his arrest, committing a crime or was otherwise engaged in activity which gave rise to probable cause to effect an arrest. Further, the brown paper sack containing the plastic bags containing the white substance was in plain view of the officers at the time the Petitioner was arrested and the automobile was taken into possession of the police.

The inapplicability of the cases relied upon by Petitioner are obvious from a review

of the factual dissimilarities from the case at bar. "The case of Kinard v. State, 335 So. 2d 924 (Ala. 1976) involved an initial intrusion by a stop of a vehicle for an I.D. check. In the case at bar, authorities had observed the Petitioner place several plastic bags containing a white substance into the brown paper sack. A short time earlier, this same surveillance team watched the Petitioner and Bice load garbage bags full of unknown material into the Petitioner's car and saw Bice "cutting" some cocaine inside th house. This constituted a more justifiable intrusion by police than a vehicle stop for a I. D. check. These facts further negate the Petitioner's argument that Coolidge v. New Hampshire, 403 U. S. 443 (1977), does not apply, there allegedly being no justification for an intrusion whereby the police inadvertently came across evidence incriminating the accused. The brown paper sack was in the plain view of Brooks. Petitioner

had just been observed placing plastic bags containing a white substance into the brown paper sack.

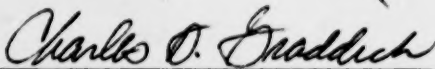
The Respondent would finally contend that the facts of this case fall well within the standard of Shipman v. State, 291 Ala. 484, 282 So.2d 700 (1973), another case relied upon by Petitioner:

" For an item in plain view to be validly seized, the officer must possess some judgment at the time that the object to be seized is contraband and that judgment must be grounded upon probable cause." 291 Ala. at 448.

Brooks positively possessed such judgment which judgment was grounded in his observation of the activities preceding the seizure of the contraband.

CONCLUSION

The Respondent respectfully submits
that based on the foregoing, the Petitioner's
Petition for a Writ of Certiorari to the
Supreme Court of Alabama be denied.



CHARLES A. GRADDICK
ATTORNEY GENERAL OF ALABAMA

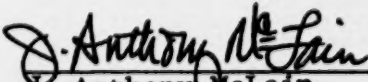


ANTHONY McLAIN
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, J. Anthony McLain, a Special Assistant Attorney General of Alabama, and a member of the Bar of the Supreme Court of the United States and one of the attorneys for the State of Alabama, respondent, do hereby certify that on this date DECEMBER 16, 1982, I did serve a copy of the requisite number of the foregoing on the attorney for the petitioner by mailing the same to him, first class postage prepaid and addressed as follows:

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